



COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Public Policy, to which was referred Senate Bill No. 185, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 7.1-3-3-5, AS AMENDED BY P.L.163-2025,
4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: Sec. 5. (a) The holder of a beer wholesaler's permit
6 may purchase and import from the primary source of supply, possess,
7 and sell at wholesale, beer and flavored malt beverages manufactured
8 within or without this state.
9 (b) A beer wholesaler permittee may possess, transport, sell, and
10 deliver beer to:
11 (1) another beer wholesaler authorized by the brewer to sell the
12 brand purchased;
13 (2) an employee; ~~and~~
14 (3) a holder of a beer retailer's permit, beer dealer's permit,
15 temporary beer permit, dining car permit, boat permit, airplane
16 permit, or supplemental caterer's permit; **and**
17 **(4) a food manufacturer that is registered with the federal**
18 **Food and Drug Administration, for the purpose of adding or**
19 **integrating the beer into a product or recipe;**

located within this state. The sale, transportation, and delivery of beer shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery.

(c) The beer wholesaler's bona fide regular employees may purchase beer from the wholesaler in:

(1) bottles, cans, or any other type of permissible containers in an amount not to exceed forty-eight (48) pints; or

(2) one (1) keg;

at any one (1) time.

(d) The importation, transportation, possession, sale, and delivery of beer shall be subject to the rules of the commission and subject to the same restrictions provided in this title for a person holding a brewer's permit.

(e) The holder of a beer wholesaler's permit may purchase, import, possess, transport, sell, and deliver any commodity listed in IC 7.1-3-10-5, unless prohibited by this title. However, a beer wholesaler may deliver flavored malt beverages only to the holder of one (1) of the following permits:

(1) A beer wholesaler or wine wholesaler permit, if the wholesaler is authorized by the primary source of supply to sell the brand of flavored malt beverage purchased.

(2) A wine retailer's permit, wine dealer's permit, temporary wine permit, dining car wine permit, boat permit, airplane permit, or supplemental caterer's permit.

(f) A beer wholesaler may:

(1) store beer for an out-of-state brewer described in IC 7.1-3-2-9 and deliver the stored beer to another beer wholesaler that the out-of-state brewer authorizes to sell the beer;

(2) perform all necessary accounting and auditing functions associated with the services described in subdivision (1); and

(3) receive a fee from an out-of-state brewer for the services described in subdivisions (1) through (2).

(g) A beer wholesaler may sell, donate, transport, and deliver beer to a qualified organization for:

(1) an allowable event under IC 7.1-3-6.1;

(2) a charity auction under IC 7.1-3-6.2; or

(3) an event under IC 7.1-3-6.3;

located within this state. The sale, donation to a qualified organization,

1 transportation, and delivery of beer shall be made only from inventory
 2 that has been located on the wholesaler's premises before the time of
 3 invoicing and delivery."

4 Page 1, between lines 13 and 14, begin a new paragraph and insert:

5 "SECTION 2. IC 7.1-3-18.5-1.5 IS ADDED TO THE INDIANA
 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2026]: **Sec. 1.5. (a) A person may not sell**
 8 **tobacco products or electronic cigarettes at wholesale or**
 9 **participate in the wholesale distribution of tobacco products or**
 10 **electronic cigarettes without a valid wholesale tobacco sales**
 11 **certificate issued by the commission.**

12 **(b) The commission may only issue a wholesale tobacco sales**
 13 **certificate to a person who owns or operates at a premises**
 14 **consisting of a permanent building or structure that is used for the**
 15 **wholesale distribution of tobacco products or electronic**
 16 **cigarettes."**

17 Page 5, delete lines 38 through 42, begin a new paragraph and
 18 insert:

19 "SECTION 8. IC 7.1-7-1-0.5 IS ADDED TO THE INDIANA CODE
 20 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2026]: **Sec. 0.5. (a) An e-liquid product manufactured,**
 22 **distributed, or sold in Indiana must adhere to all applicable rules**
 23 **and regulations of the federal Food and Drug Administration,**
 24 **including those rules and regulations regarding product safety,**
 25 **labeling, and manufacturing standards.**

26 **(b) Except as otherwise provided in this article, this article does**
 27 **not require a product subject to this article to be specifically**
 28 **approved by the federal Food and Drug Administration if the**
 29 **product satisfies all applicable rules and regulations.**

30 **(c) If a product subject to this article is approved by the federal**
 31 **Food and Drug Administration, the approval constitutes prima**
 32 **facie evidence of compliance with this article.**

33 SECTION 9. IC 7.1-7-1-1, AS AMENDED BY P.L.206-2017,
 34 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2026]: **Sec. 1. (a) Except as provided in subsection (b), this**
 36 **article applies to the following:**

37 (1) The commercial manufacturing, bottling, selling, bartering, or
 38 importing of e-liquid in Indiana.

(2) The sale, possession, and use of e-liquid products in Indiana,
including through a cigarette vending machine.

(b) This article ~~does not apply~~ **applies** to a ~~manufacturer~~
manufacturers of a ~~both~~ closed **and open** system vapor ~~product,~~
~~except as specifically provided in this article.~~ **devices manufactured**
or sold in Indiana.

SECTION 10. IC 7.1-7-1-2, AS AMENDED BY P.L.206-2017,
 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2026]: Sec. 2. The purpose of this article is to protect public
 health and safety by:

(1) ensuring the safety and security of e-liquid manufactured for
 sale in Indiana;

(2) ensuring that e-liquid manufactured or sold in Indiana
 conforms to appropriate standards of identity, strength, quality,
 and purity; ~~and~~

(3) ensuring that e-liquid is not contaminated or adulterated by
 the inclusion of ingredients or other substances that might pose
 unreasonable threats to public health and safety; **and**

**(4) ensuring dangerous foreign adversary products are not
 sold or distributed in Indiana.**

SECTION 11. IC 7.1-7-2-8 IS REPEALED [EFFECTIVE JULY 1,
 2026]. Sec. 8. "Distributor" means a person who is licensed under
~~IC 6-7-2-8 that:~~

~~(1) distributes, sells, barter, or exchanges e-liquid in Indiana to
 retail dealers for the purpose of resale; or~~

~~(2) purchases e-liquid directly from a manufacturer for the
 purpose of resale.~~

SECTION 12. IC 7.1-7-2-10, AS AMENDED BY P.L.206-2017,
 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2026]: Sec. 10. "E-liquid" means a substance that:

(1) may or may not contain nicotine; and

(2) is intended to be vaporized and inhaled using a vapor ~~product.~~
device.

SECTION 13. IC 7.1-7-2-12, AS AMENDED BY P.L.206-2017,
 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2026]: Sec. 12. "Flavoring" means a food grade additive or
 synthetic flavoring substance that is used to add flavor and that is not
 prohibited by the federal Food and Drug Administration as an additive

1 in vapor ~~products~~: **devices.**

2 SECTION 13. IC 7.1-7-2-12.3 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2026]: **Sec. 12.3. "Foreign adversary" means**
5 **an individual, business entity, or other entity located in or**
6 **organized under the laws of a nation governed by a foreign**
7 **government listed in 15 CFR 791.4.**

8 SECTION 14. IC 7.1-7-2-12.5 IS ADDED TO THE INDIANA
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2026]: **Sec. 12.5. "Foreign adversary**
11 **product" means:**

12 (1) **an e-liquid; or**

13 (2) **an e-liquid containing an ingredient;**

14 **that is manufactured, sourced, or otherwise imported from a**
15 **nation governed by a foreign government listed in 15 CFR 791.4.**

16 SECTION 15. IC 7.1-7-2-15, AS AMENDED BY P.L.206-2017,
17 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2026]: **Sec. 15. "Manufacturer" means a person located inside**
19 **or outside Indiana that is engaged in manufacturing e-liquid for closed**
20 **and open system vapor devices.**

21 SECTION 16. IC 7.1-7-2-15.5 IS REPEALED [EFFECTIVE JULY
22 1, 2026]. ~~Sec. 15.5: "Manufacturer of a closed system vapor product"~~
23 ~~means a manufacturer of vapor products whose closed system vapor~~
24 ~~products are for sale in Indiana; but that does not produce open system~~
25 ~~vapor products that are for sale in Indiana.~~

26 SECTION 17. IC 7.1-7-2-23, AS AMENDED BY P.L.206-2017,
27 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2026]: **Sec. 23. "Vapor ~~product~~ device" means a powered**
29 **vaporizer that converts e-liquid to a vapor intended for inhalation. The**
30 **term includes both open and closed system vapor devices.**

31 SECTION 18. IC 7.1-7-2-24 IS ADDED TO THE INDIANA CODE
32 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2026]: **Sec. 24. "Wholesaler" means a person who has obtained**
34 **or is required to obtain a wholesale tobacco sales certificate under**
35 **IC 7.1-3-18.5-1.5 that:**

36 (1) **distributes, sells, barter, or exchanges e-liquid in Indiana**
37 **to retail dealers for the purpose of resale; or**

38 (2) **purchases e-liquid directly from a manufacturer for the**

purpose of resale to resellers.

SECTION 19. IC 7.1-7-3-2, AS AMENDED BY P.L.206-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2. The commission has the following duties and responsibilities:

(1) To require the submission of information necessary to implement this article.

(2) To issue permits.

(3) To charge fees as set forth in this article. ~~The fees charged under this subdivision may not exceed the actual costs incurred by the commission.~~

(4) To approve or deny a permit application made under IC 7.1-7-4 within sixty (60) days of receiving the application.

SECTION 20. IC 7.1-7-4-1, AS AMENDED BY P.L.49-2020, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. **(a) Not later than January 1, 2027, a manufacturer of an e-liquid product that is manufactured or sold in Indiana must obtain a permit under this section.**

~~(a)~~ **(b)** A manufacturer of e-liquid may not mix, bottle, package, or sell e-liquid to retailers, consumers, or ~~distributors~~ **wholesalers** in Indiana without a permit issued by the commission under this article.

~~(b)~~ **An e-liquid manufactured by an e-liquids manufacturer approved by the commission under this article before July 1, 2017, may be distributed and sold for retail until the expiration date of the e-liquid.**

~~(c)~~ **(c)** A manufacturing permit issued by the commission **before July 1, 2026**, is valid for five (5) years. **A manufacturing permit issued by the commission after June 30, 2026, is valid for two (2) years. A manufacturing permit issued by the commission under this article before July 1, 2017, does not expire before July 1, 2020.**

~~(d)~~ **(d)** An initial application for a manufacturing permit must include the following:

(1) The name, telephone number, and address of the applicant.

(2) The name, telephone number, and address of the manufacturing facility.

(3) The name, telephone number, title, and address of the person responsible for the manufacturing facility.

(4) Verification that the facility will comply with applicable

tobacco products good manufacturing practices promulgated under 21 U.S.C. 387f(e) of the federal Food, Drug, and Cosmetic Act.

(5) Verification that the manufacturer will comply with the applicable ingredient listing required by 21 U.S.C. 387d(a)(1) of the federal Food, Drug, and Cosmetic Act.

(6) Written consent allowing the state police department to conduct a state or national criminal history background check on any person listed on the application.

(7) A nonrefundable initial application fee of ~~one thousand dollars (\$1,000)~~ **three thousand dollars (\$3,000)**.

(8) Verification that the manufacturer will comply with all other state and federal laws related to e-liquids.

(9) An affirmation, made under the penalties for perjury, that the manufacturer will not use any ingredients or e-liquids in the manufacturer's manufacturing process that originate in a nation governed by a foreign government listed in 15 CFR 791.4.

(e) The fees collected under subsection (d)(7) shall be deposited in the enforcement and administration fund established under IC 7.1-4-10.

(f) Except as otherwise provided in this article, an applicant for a permit under this section must adhere to all state and federal laws applicable to e-liquids, including rules and regulations promulgated by the federal Food and Drug Administration.

SECTION 21. IC 7.1-7-4-2, AS AMENDED BY P.L.206-2017, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2. (a) A manufacturing permit that is renewed by the commission **before July 1, 2026**, is valid for five (5) years. **A manufacturing permit that is renewed by the commission after June 30, 2026, is valid for two (2) years.**

(b) A renewal application for a manufacturing permit must include the following:

(1) The name, telephone number, and address of the applicant.

(2) The name, telephone number, and address of the manufacturing facility.

(3) The name, telephone number, title, and address of the person responsible for the manufacturing facility.

(4) Verification that the facility complies with all tobacco

products good manufacturing practices:

(A) set forth in; and

(B) promulgated in federal rules under;

21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food, Drug, and Cosmetic Act.

(5) Written consent allowing the state police department to conduct a state or national criminal history background check on any person listed on the application.

(6) A nonrefundable renewal application fee of ~~five hundred dollars (\$500)~~ **one thousand dollars (\$1,000)**.

(7) Verification that the manufacturer will comply with all other state and federal laws related to e-liquids.

(8) An affirmation, made under the penalties for perjury, that the manufacturer will not use any ingredients or e-liquids in the manufacturer's manufacturing process that originate in a nation governed by a foreign government listed in 15 CFR 791.4.

(c) The fees collected under subsection (b)(6) shall be deposited in the enforcement and administration fund established under IC 7.1-4-10.

SECTION 22. IC 7.1-7-4-6, AS AMENDED BY P.L.17-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 6. (a) As used in this section:

(1) "adulterated" means a product that:

(A) consists in whole or in part of any filthy, putrid, or decomposed substance; ~~or~~

(B) is contaminated by any added poisonous or added deleterious substance that may render the product injurious to health; ~~and or~~

(C) is a foreign adversary product (as defined in IC 7.1-7-2-12.5); and

(2) "tamper evident package" means a package having at least one

(1) indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

(b) A manufacturing facility shall comply with the following requirements:

(1) An e-liquid container must use a child proof cap that has the child resistant effectiveness set forth in the federal poison

1 prevention packaging standards, 16 CFR 1700.15(b)(1).

2 (2) An e-liquid container must use a tamper evident package. The
3 tamper evident package feature must be designed to and remain
4 intact when handled in a reasonable manner during the
5 manufacture, distribution, and retail display of the e-liquid
6 container.

7 (3) The label on an e-liquid container must meet the nicotine
8 addictiveness warning statement requirements set forth in 21 CFR
9 1143.3.

10 (4) The manufacturer, **wholesaler**, or retailer may not add an
11 adulterated product to any e-liquid produced for sale in Indiana.

12 (5) The manufacturer must submit to random site visits by the
13 commission.

14 (6) The manufacturer may:

15 (A) own and control both the e-liquid manufacturing process
16 and the bottling process; or

17 (B) subcontract with another manufacturer for the performance
18 of the e-liquid manufacturing service, the bottling services, or
19 both services.

20 However, both the manufacturer performing a service under
21 clause (B) and the manufacturer for which the service is
22 performed must meet the requirements of this article, **including**
23 **obtaining a permit. A manufacturer may not be located in or**
24 **source any ingredient or substance used in an e-liquid product**
25 **from a nation governed by a foreign government listed in 15**
26 **CFR 791.4.**

27 (7) A manufacturer may use a flavoring, as defined by
28 IC 7.1-7-2-12, as an ingredient in an e-liquid.

29 (8) The manufacturer or any person listed on the permit
30 application may not have been convicted within ten (10) years
31 before the date of application of:

32 (A) a federal crime having a sentence of at least one (1) year;

33 (B) an Indiana Class A, Class B, or Class C felony (for a crime
34 committed before July 1, 2014) or a Level 1, Level 2, Level 3,
35 Level 4, or Level 5 felony (for a crime committed after June
36 30, 2014);

37 (C) a crime in a state other than Indiana having a penalty equal
38 to the penalty for an Indiana Class A, Class B, or Class C

felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);

(D) an Indiana Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014); or

(E) a crime in a state other than Indiana similar to a Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014).

SECTION 23. IC 7.1-7-4-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 8. (a) This section does not apply to:**

(1) a vapor device (as defined in IC 7.1-7-2-23), including:

(A) a part to be utilized in an open or closed system to convert e-liquid to a vapor for inhalation; or

(B) an e-liquid product that includes a vapor device sourced from or manufactured by a foreign adversary; and

(2) an e-liquid product that is manufactured by or sourced from a foreign adversary, if the e-liquid product has been specifically approved for distribution and sale in the United States by the federal Food and Drug Administration.

(b) A manufacturer of e-liquid that is permitted or required to be permitted under this chapter may not manufacture or source a foreign adversary product.

(c) A retailer that holds or is required to hold a tobacco sales certificate under IC 7.1-3-18.5-1 may not possess, sell, or otherwise distribute a foreign adversary product.

(d) A wholesaler that holds or is required to hold a wholesale tobacco sales certificate under IC 7.1-3-18.5-1.5 may not possess, sell, or otherwise distribute a foreign adversary product.

SECTION 24. IC 7.1-7-5-1.1, AS AMENDED BY P.L.220-2023, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 1.1. (a)** A retailer must have a valid sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1 that contains a separate box to check for identifying a

1 retailer that sells e-liquids.

2 (b) A retailer may purchase e-liquid only from an Indiana e-liquid
3 manufacturing permit holder or an Indiana ~~distributor~~ **wholesaler**
4 permit holder.

5 (c) A retailer shall retain all invoices for e-liquid that the retailer
6 purchases for two (2) years.

7 (d) A retailer shall not allow the self-service sale for individuals
8 purchasing an e-liquid.

9 (e) A retailer may not sell an e-liquid that contains more than
10 seventy-five (75) milligrams per milliliter of nicotine.

11 (f) A manufacturer must have an e-liquid manufacturing permit
12 issued under IC 7.1-7-4.

13 (g) A ~~distributor~~ **wholesaler** that does not have a valid e-liquid
14 manufacturing permit issued under IC 7.1-7-4 must have a valid
15 ~~distributor's license~~ **wholesale tobacco sales certificate** issued under
16 ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

17 (h) A ~~distributor~~ **wholesaler** shall purchase and distribute e-liquid
18 from an:

19 (1) Indiana e-liquid manufacturer that has a valid e-liquid
20 manufacturing permit under IC 7.1-7-4; or

21 (2) Indiana e-liquid ~~distributor~~ **wholesaler** that has a valid:

22 (A) e-liquid manufacturing permit issued under IC 7.1-7-4; or

23 (B) ~~distributor's license~~ **wholesale tobacco sales certificate**
24 under ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

25 (i) A ~~distributor~~ **wholesaler** shall retain all invoices to a retailer or
26 from a manufacturer for at least two (2) years.

27 (j) A manufacturer, ~~distributor~~, **wholesaler**, or retailer may not
28 market e-liquid as a modified risk tobacco product, as defined by
29 IC 7.1-7-2-17.5, that has not been designated as a modified risk
30 tobacco product by the federal Food and Drug Administration.

31 (k) Except as provided in subsection (m), a manufacturer ~~including~~
32 ~~a manufacturer of a closed system vapor product~~, **permitted or**
33 **required to be permitted under IC 7.1-7-4** shall annually submit a
34 report to the commission setting forth:

35 (1) each new product that the manufacturer is producing and is
36 sold in Indiana with a list of the contents and ingredients by
37 volume; and

38 (2) whether the manufacturer has stopped producing products

1 previously produced and sold in Indiana.

2 A report under this subsection is confidential, and the commission may
3 not disclose it to another person.

4 (l) A manufacturer **permitted or required to be permitted under**
5 **IC 7.1-7-4** shall annually submit a report to the commission setting
6 forth:

7 (1) the milligrams per milliliter of nicotine in each product the
8 manufacturer produces; and

9 (2) the milliliters of each product sold that current year.

10 A report under this subsection is confidential, and the ATC may not
11 disclose it to another person.

12 (m) A manufacturer is not required to submit a report described in
13 subsection (k) if the manufacturer submits to the commission a
14 certification, by October 1 of each year, that each of the manufacturer's
15 vapor ~~products~~ **devices** sold in Indiana has been filed with the federal
16 Food and Drug Administration.

17 SECTION 25. IC 7.1-7-5-2, AS ADDED BY P.L.176-2015,
18 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2026]: Sec. 2. (a) A manufacturer of e-liquid may file a
20 request with the **Indiana** department **of health** for approval of an
21 ingredient to be allowed in the composition of e-liquid.

22 (b) The **Indiana** department **of health** may approve the request filed
23 under subsection (a) if the department determines that the ingredient
24 will not pose an unreasonable threat to public health and safety.

25 SECTION 26. IC 7.1-7-6-1, AS AMENDED BY P.L.206-2017,
26 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2026]: Sec. 1. (a) If a manufacturer, ~~distributor,~~ **wholesaler,**
28 or retailer violates **any provision of** this article, the manufacturer,
29 ~~distributor,~~ **wholesaler,** or retailer may be reprimanded, assessed a
30 civil penalty, or have the manufacturer's permit, ~~distributor's license,~~
31 **wholesaler's tobacco sales certificate,** or retailer's tobacco sales
32 certificate suspended **by the commission.**

33 (b) Any provision in this article that requires a manufacturer,
34 **wholesaler, or retailer** to comply with the federal Food, Drug, and
35 Cosmetic Act or a federal rule promulgated under the federal Food,
36 Drug, and Cosmetic Act is under the ~~sole~~ **dual** jurisdiction of the
37 federal Food and Drug Administration **and the commission and may**
38 **be enforced through action by the federal Food and Drug**

Administration and the commission. If the federal Food and Drug Administration seeks court enforcement of any section of the federal Food, Drug, and Cosmetic Act cited in this article and a civil monetary penalty is assessed against the manufacturer, the act or omission for which the penalty was assessed constitutes a violation of this article **and may result in a reprimand or civil penalty or a revocation by the commission of the license or sales certificate of the manufacturer, wholesaler, or retailer.**

(c) The commission may assess a civil penalty against a manufacturer, ~~distributor~~, **wholesaler**, or retailer for a violation of this article in an amount that does not exceed ten thousand dollars (\$10,000). A civil penalty may be assessed in addition to other penalties allowed under this article.

(d) The commission has full authority to enforce all provisions of this article, including those that require compliance with federal law.

SECTION 27. IC 24-3-2-2, AS AMENDED BY P.L.217-2017, SECTION 154, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2. Unless the context in this chapter requires otherwise, the term:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material; provided the definition in this paragraph shall not be construed to include cigars.

(b) "Person" or the term "company", used in this chapter interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint vendor, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation, or other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells,

1 barter, exchange, or distributes cigarettes in the state of Indiana to
2 retail dealers for the purpose of resale, or who purchases for resale
3 cigarettes from a manufacturer of cigarettes or from a wholesaler,
4 jobber, or distributor outside the state of Indiana who is not a
5 distributor holding a registration certificate issued under the provisions
6 of IC 6-7-1.

7 (d) "Retailer" shall mean every person, other than a distributor, who
8 purchases, sells, offers for sale, or distributes cigarettes to consumers
9 or to any person for any purpose other than resale, irrespective of
10 quantity or amount or the number of sales.

11 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and
12 include any transfer of title to cigarettes for a valuable consideration
13 made in the ordinary course of trade or usual conduct of the seller's
14 business to the purchaser for consummation or use.

15 (f) "Sell at wholesale", "sale at wholesale", and "wholesale sales"
16 shall mean and include any transfer of title to cigarettes for a valuable
17 consideration made in the ordinary course of trade or usual conduct of
18 a distributor's business.

19 (g) "Basic cost of cigarettes" shall mean the invoice cost of
20 cigarettes to the retailer or distributor, as the case may be, or the
21 replacement cost of cigarettes to the retailer or distributor, as the case
22 may be, within thirty (30) days prior to the date of sale, in the quantity
23 last purchased, whichever is the lower, less all trade discounts and
24 customary discounts for cash, plus the cost at full face value of any
25 stamps which may be required by IC 6-7-1, if not included by the
26 manufacturer in his selling price to the distributor.

27 (h) "Department" shall mean the alcohol and tobacco commission
28 or its duly authorized assistants and employees.

29 (i) "Cost to the retailer" shall mean the basic cost of cigarettes to the
30 retailer, plus the cost of doing business by the retailer as evidenced by
31 the standards and methods of accounting regularly employed by him in
32 his allocation of overhead costs and expenses paid or incurred and must
33 include without limitation labor (including salaries of executives and
34 officers), rent, depreciation, selling costs, maintenance of equipment,
35 delivery costs, all types of licenses, taxes, insurance, and advertising;
36 however, any retailer who, in connection with the retailer's purchase,
37 receives not only the discounts ordinarily allowed upon purchases by
38 a retailer, but also, in whole or in part, discounts ordinarily allowed on

purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business:

(1) by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be the following percent of the basic cost of cigarettes to the retailer:

(A) Until January 1, 2018, twelve percent (12%).

(B) During 2018, twelve and twenty-five hundredths percent (12.25%).

(C) During 2019, twelve and five tenths percent (12.5%).

(D) During 2020, twelve and seventy-five hundredths percent (12.75%).

(E) During 2021, thirteen percent (13%).

(F) During 2022, thirteen and twenty-five hundredths percent (13.25%).

(G) During 2023, thirteen and five tenths percent (13.5%).

(H) During 2024, thirteen and seventy-five hundredths percent (13.75%).

(I) After 2024, fourteen percent (14%).

(2) by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be the following percent of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor:

(A) Until January 1, 2018, twelve percent (12%).

(B) During 2018, twelve and twenty-five hundredths percent (12.25%).

(C) During 2019, twelve and five tenths percent (12.5%).

(D) During 2020, twelve and seventy-five hundredths percent (12.75%).

(E) During 2021, thirteen percent (13%).

(F) During 2022, thirteen and twenty-five hundredths percent (13.25%).

(G) During 2023, thirteen and five tenths percent (13.5%).

(H) During 2024, thirteen and seventy-five hundredths percent

1 (13.75%).

2 (I) After 2024, fourteen percent (14%).

3 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to
 4 the distributor, plus the cost of doing business by the distributor as
 5 evidenced by the standards and methods of accounting regularly
 6 employed by him in his allocation of overhead costs and expenses, paid
 7 or incurred, and must include without limitation labor costs (including
 8 salaries of executives and officers), rent, depreciation, selling costs,
 9 maintenance of equipment, delivery costs, all types of licenses, taxes,
 10 insurance, and advertising. In the absence of proof of a lesser or higher
 11 cost of doing business by the distributor making the sale, the cost of
 12 doing business by the wholesaler shall be presumed to be four percent
 13 (4%) of the basic cost of cigarettes to the distributor, plus cartage to the
 14 retail outlet, if performed or paid for by the distributor, which cartage
 15 cost, in the absence of proof of a lesser or higher cost, shall be deemed
 16 to be one-half of one percent (0.5%) of the basic cost of cigarettes to
 17 the distributor.

18 (k) "Registration certificate" refers to the registration certificate
 19 issued to cigarette distributors by the department of state revenue under
 20 IC 6-7-1-16.

21 **(l) "Buydown" means any payment or compensation given by**
 22 **a cigarette manufacturer to a cigarette distributor or retailer to**
 23 **promote the sale of cigarettes and for which the manufacturer**
 24 **requires that either:**

25 **(1) the distributor pass the resulting price reduction on to the**
 26 **retailer; or**

27 **(2) the retailer pass the resulting price reduction on to the**
 28 **consumer.**

29 SECTION 28. IC 24-3-2-9 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 9. (a) In determining
 31 cost to the retailer and cost to the distributor, the court or the
 32 department, as the case may be, shall receive and consider as bearing
 33 on the bona fides of such cost evidence tending to show that any person
 34 complained against under any of the provisions of this chapter
 35 purchased cigarettes with respect to the sale of which complaint is
 36 made at a fictitious price, or upon terms, or in such manner, or under
 37 such invoices, as to conceal the true cost, discounts, or terms of
 38 purchase, and shall also receive and consider as bearing on the bona

1 fides of such cost evidence of the normal, customary, and prevailing
 2 terms and discounts in connection with other sales of a similar nature
 3 in the trade area or state.

4 (b) Merchandise given gratis or payment made to a retailer or
 5 distributor for display, or advertising, or promotion purposes, or
 6 otherwise shall not be considered in determining the cost of cigarettes
 7 to the retailer or distributor.

8 **(c) A buydown must be considered in determining the cost to the**
 9 **retailer or the cost to the distributor, as applicable, provided that**
 10 **the sum of any buydown and consideration paid by the purchaser**
 11 **is not below the cost to the retailer or distributor."**

12 Page 6, delete lines 1 through 2.

13 Page 11, after line 11, begin a new paragraph and insert:

14 "SECTION 13. **An emergency is declared for this act.**".

15 Renumber all SECTIONS consecutively.

(Reference is to SB 185 as introduced.)

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

Committee Vote: Yeas 9, Nays 0.

Alting

Chairperson